



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

AFGHANISTAN

IAA reference: IAA18/05766

Date and time of decision: 4 March 2019 10:51:00

D Power, Reviewer

**Decision**

---

The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Tajik from Afghanistan. On 25 May 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 27 September 2018, a delegate of the Minister for Immigration (the delegate) made a decision to refuse to grant the applicant a protection visa. The delegate did not accept the applicant's claim that he would be targeted because his father and brother had worked for the American forces. The delegate found the applicant's claims not to be credible. He further found that the applicant would not face harm because of his ethnicity or religion, the security situation in his home region, as a returnee from a western country or because his personal details had been disclosed on the internet.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 23 October 2018, the IAA received a submission from the applicant's migration agent which refutes a number of the delegate's findings and takes issue with the process. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates a number of claims made to the delegate. Referenced also was an excerpt of the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, dated 30 August 2018, which is considered below.
5. The applicant's agent also sent a submission to the delegate on 27 September, the same day that the delegate made his decision but shortly after that decision had been finalised. It was, therefore, not before the delegate. However, this was not made known to the agent. The 27 September submission has since been provided to the IAA by the Department. Although the delegate was under no obligation to inform the agent that this submission was not considered, I consider that the agent would reasonably have believed that the submission had been taken into account before the decision was made. As stated above, a copy of the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, dated 30 August 2018, was attached to and referenced in the 27 September submission to the delegate. The agent has referenced the UNHCR report in their IAA submission, and indicated their clear belief that the 27 September submission and the UNHCR report were before the delegate. In light of timing and the unusual circumstances outlined above I am satisfied s.473DD(a) and (b)(i) are met.
6. On 30 October 2018, the IAA received a further email from the applicant's migration agent, attached to which was a letter from [a health service]. This was not before the delegate and is new information. The letter comes from an accredited counsellor and is credible, personal information. The letter restates some of the points made in a report written by the same author and provided to the delegate but also contains some further elaborations on the applicant's circumstances and state of mind. It also takes issue, to some extent, with the delegate's characterisation of the author's report on the applicant that was previously put before the delegate. The agent asserts that the delegate has called "into question the professional assessment of the treating practitioner". As set out above, part of the letter appears to be a rebuttal to the delegate's supposed inferences regarding the report. Whether

or not the delegate made such inferences, I have no concerns about the practitioners' assessment, and so this information is limited relevance. The rest of the letter predominantly restates the issues contained in the [health service] report that was before the delegate (and at a couple of points refers the reader back to that report). The letter does not add substantially to the information contained in that initial report before the delegate. Given all of the above, I am not satisfied that there are exceptional circumstances that justify consideration of this information under s.473DD.

### **Applicant's claims for protection**

---

7. The applicant's written claims can be summarised as follows:

- He is a Sunni Tajik from Logar province Afghanistan.
- The applicant's father and brother were engaged in [providing a service] at a camp for American forces in Logar. They did this work for about seven or eight months before they disappeared.
- The applicant later learnt from his mother that the Taliban had sent his father threatening letters.
- After his father and brother went missing the applicant's family moved in with [a Relative A]. They were not allowed to go to school or leave the house.
- After about a year his [Relative A] decided to send the applicant out of the country because his life was in danger.
- The applicant left Afghanistan via Kabul and eventually made his way to Australia.
- He fears harm because his brother and father worked for the Americans, and as a returnee from a western country, who came to Australia as an unaccompanied minor.
- The applicant was subject to an unauthorised disclosure of his personal details by the Department of Immigration and fears that this information is known to the Taliban and other anti-government elements (AGEs) and will increase his risk on return.

### **Refugee assessment**

---

8. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

9. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country

- the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
10. The applicant claims to be a Sunni Tajik from Logar province in Afghanistan. He has presented a consistent account of his identity and nationality since his arrival in Australia. He provided a translated copy of his taskera, and was able to provide a reasonable level of detail about his childhood and his home region in Afghanistan at interview. I accept the applicant is an Afghani national, that his identity and religion is as claimed and that Afghanistan is the receiving country for the purposes of this review.

#### *Targeting by the Taliban*

11. The applicant claims that his father and brother were engaged to [provide a service] at a camp for American forces in Logar.
12. As an apparent result of that work, the applicant's father and brother received threats from, and were targeted by, the Taliban. The applicant's father and brother went missing sometime in 2012. In order to ensure their safety, his family moved in with a [Relative A] who lived in the same village.
13. According to his SHEV application, the applicant departed the country in June 2013. The applicant's family had been living with his [Relative A] for about one year prior to the applicant's departure. This would mean they moved in with him around June 2012. His father and brother worked for the American camp for about seven or eight months before they went missing and the family joined the [Relative A]. This means they commenced that work around October or November 2011. If the applicant's birthdate is even approximately correct, he would have been around [age] years old at the time at the time his father and brother commenced their alleged employment [at] the American camp.
14. The applicant was unable to provide much detail about the work his father and brother did. He did not know the name of the camp they worked at and never visited it. He did not know how they [provided the service] but speculated that they may have used their car. He says that his father never brought a truck or any equipment home. He did not know [details of his father's service]. He never saw any uniform or ID cards for the father. He was not sure if his father was self-employed or worked for a contractor.
15. I would not necessarily expect [an age] year old to know the answers to all of the questions above. The applicant's agent has also put considerable emphasis on the applicant's alleged trauma and the significant effect that this has had on his ability to recall events. However, his inability to provide any detail at all about the work the father did is curious. He does not indicate that he ever asked the father about his job, nor does the applicant indicate that he once knew these things but has forgotten them. It may be expected that the applicant would have some information, even possibly from his mother or [Relative A]. The applicant indicated that his mother revealed to him after they went missing that the family had received threatening letters from the Taliban regarding the work his father and brother did, but this does not seem to have prompted any further enquiries on the part of the applicant. The issue

seems not to be one of faulty recall but instead a curious lack of interest in an activity that kept his father and [brother] occupied for many months and allegedly resulted in their disappearance.

16. That aside, it remains that there is virtually no evidence or supporting detail to corroborate the applicant's assertion that his father and brother worked for the American forces and were targeted by the Taliban on that account. The applicant has no documentation related to their employment. He can supply virtually no detail in regard to how they carried out the work or where they performed it. He did not witness any occasions in which his father and brother were subject to any adverse attention. As noted above, he claims that he was not even made aware until later that they received threatening letters from the Taliban.
17. The applicant claims that after his father and brother went missing the family moved in with a [Relative A]. The applicant indicated that the [Relative A] lived not very far away in the same village. The applicant stated in his written claims that once the Taliban become aware that some members of a family have worked for the Americans, they will target the whole family. He states that this for this reason he had to stay inside his [Relative A's] house and he was not allowed to go to school. His mother and siblings also stayed in the house as much as possible.
18. There are a few issues with this claim. First of all, by the applicant's own account, the [Relative A] lived close by in the same village. It is hard to imagine that the Taliban could not have located a family of [number] living a short distance away in the same village if they had been so minded. Despite this, the applicant and his family lived with the [Relative A] for at least a year without apparent incident prior to the applicant's departure. Further, in the five years that has passed since the applicant's departure, the applicant has not indicated that the family have been personally targeted in any way.
19. In regard to his own schooling, the applicant states in his written claims that he studied at school until [grade]. This is supported by the education history he completed for his SHEV application that indicates he was at school from [specified year] until [year]. It is difficult to reconcile his statements that he never (or rarely) attended school with what appears to be a relatively uninterrupted progression through [number] years of primary schooling.
20. Further, the applicant's remarks about the precautions the family supposedly took once they moved in with the [Relative A] are somewhat at odds with his statements earlier in the interview. The applicant claimed at interview that the Taliban had directly targeted the school in his village, and that they had thrown acid in the faces of some of the female students on more than one occasion. When the delegate pointed out that none of this was in the applicant's written claims, the applicant simply responded that he had already flagged that he would raise other matters at interview. The delegate then reminded the applicant that when they discussed his siblings earlier in the interview, the applicant stated that his [sibling] had finished school and that his other siblings were all currently in school. The applicant then claimed that they did not attend school very often. The delegate reiterated the applicant's statement that [one sibling] had finished school, to which the applicant responded that [they] had to go through a lot in order to finish school. It is difficult to reconcile the applicant's earlier statements about his siblings with his claims that they were unable to attend school. It is also difficult to accept that his female siblings would all continue to attend school, even irregularly, if female students at that school had been subject to acid attacks by the Taliban on multiple occasions.
21. I note the photographs the applicant has provided of an apparently deceased male that he claims to be his father. Despite the agent's assertions to the contrary, it is not at all clear to me

that the man who appears to have been prepared for burial in photos 3 and 4 is the same man featured in Photo 1 (Father's Taskera) and Photo 2 (Portrait of Father). In any case, whether or not the man is the applicant's father, the photos provide no evidence of the cause of death. The applicant says that he asked for a photo of any of the parts of his father's body that had been struck by bullets but that his mother had refused because she did not want to upset him further. The applicant states that his mother only learned of his father's death when the father's body was brought back to the village by people from the village. She then informed the applicant that his father was dead sometime in early 2016.

22. By the applicant's account, his father must have gone missing sometime in 2012. It is not clear then why the father's body was only returned to the village some years later. Without being indelicate, the applicant's father could not have died much before the date he was returned to his village given the relatively good condition of his remains. The applicant did not provide any information as to where the father had been in the intervening three or four years, or the circumstances under which his body came into the possession of people from his village. I am prepared to accept that the man in the photos is the applicant's father. I also accept that, regardless of the manner of his father's passing, it would have had a significant and distressing effect on the applicant. However, I am not satisfied that the father died of anything other than natural causes sometime in 2016.
23. As noted above, the applicant's agent has made a number of submissions on the applicant's alleged trauma and its effect on his recall of events. The lack of detail about the work his father and brother were doing for the Americans is certainly notable. However, the issues with the applicant's account are more fundamental than a lack of detail or an inability to recall past events clearly. Rather it is that the applicant appears to recall events in ways that are almost entirely at odds with one another. His female siblings cannot both have been kept out of a school subject to multiple Taliban acid attacks and also be attending that same school in the footsteps of [one sibling] who completed [schooling] there. The applicant cannot have been both prevented from attending school and also have completed [number] years of primary schooling, only ceasing his education when he left the country. Added to this are some of the implausibilities noted above, most particularly the idea that all [number] members of the applicant's family could simply have moved in with a [Relative A] in the same village and thus avoid any Taliban reprisal, presuming the Taliban had any interest in them in the first place.
24. Given the implausibilities and contradictions in the applicants account, I do not accept that the applicant's father and brother worked for the American forces in Logar. I also do not accept that the applicant's family were targeted on that account or have ever come to the attention of the Taliban (or any other AGEs).
25. I am not satisfied that the applicant faces a real chance of harm from the Taliban or any other AGEs in connection with his family members.

#### *Tajik Ethnicity*

26. The delegate also considered whether the applicant would be targeted due to his Tajik ethnicity.
27. After Pashtuns, Tajiks are the second largest ethnic group in Afghanistan, comprising some 30% of the Afghani population<sup>1</sup>. Available country information does not support the view that the Taliban have targeted Tajiks on the basis of their ethnicity. In a 2018 report, the UNHCR noted

---

<sup>1</sup> Norwegian Afghanistan Committee, "Ethnic groups Afghanistan", 29 March 2017, CXC9040664768

a number of groups at risk of targeted attacks by anti-government elements (AGEs) including members of the armed forces and law enforcement, high profile elders or religious scholars, human rights groups, and religious minorities (particularly Hazara Shias), but did not indicate Tajiks were a group of concern<sup>2</sup>.

28. The applicant also confirmed at interview that the population of his village is mostly Tajik. I note that the applicant's [Relative A] appears to have worked continuously for some time and has been able to support his extended family. The applicant did not make any claim or statement to the effect that his [Relative A] (or indeed his own family) had ever faced any issues due to his ethnicity or that considerations of that kind played any part in the applicant deciding to leave Afghanistan. No submission has been made to the IAA that the applicant faces a real chance of harm due to his ethnicity. The country information does not support the view that Tajiks, such as the applicant face a real chance of being persecuted in Logar on account of their ethnicity now or in the foreseeable future.
29. I am not satisfied that the applicant faces a real chance of any harm due to his Tajik ethnicity.

#### *Security situation in Logar province*

30. I have also considered whether the applicant faces a real chance of harm due to the security situation and general levels of violence in Logar province.
31. The security situation in Afghanistan generally, and Logar specifically, presents challenges. However, in Afghanistan as a whole, civilian casualties declined by nine per cent in 2017, compared to 2016<sup>3</sup>. I note the European Asylum Support Office (EASO) report that describes the security outlook in Logar specifically as "volatile and kinetic"<sup>4</sup>. While there were some 215 security incidents in Logar overall between September 2016 May and 2017, I note that the vast majority of these were "armed confrontations and airstrikes" that would have been primarily aimed at armed insurgents. There were only 19 incidents of "Violence targeting individuals"<sup>5</sup>. The EASO report notes that, out of a provincial population of more than 400,000 people, there were just 60 civilian casualties in the first half of 2017, and that this represented a 54% decrease over the same period in 2016<sup>6</sup>. DFAT mentions a number of population centres affected by sharp increases in civilian casualties, and none of these were in Logar province<sup>7</sup>. Deaths from Improvised Explosive Devices (IEDs), a weapon that can have an indiscriminate impact on civilian populations, declined in the first half of 2016, as did targeted, deliberate killings of civilians overall<sup>8</sup>. There is nothing in the country information before me to suggest that the security situation in the province has deteriorated or changed significantly since the reports quoted above were issued.
32. Although targeting of civilians does occur, the United Nations High Commissioner for Refugees (UNHCR) assesses that the highest risk was faced those with links to the Afghan Government, such as judicial staff and law enforcement personnel, and members of the Afghan and International security forces, and Afghans working directly with foreign troops<sup>9</sup>. Other groups

---

<sup>2</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

<sup>3</sup> Ibid

<sup>4</sup> EASO, "Afghanistan: Security Situation December 2017", 01 December 2017, CISED50AD8102

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

<sup>8</sup> EASO, "Afghanistan: Security Situation December 2017", 01 December 2017, CISED50AD8102

<sup>9</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

with a heightened risk included journalists, certain high profile elders and religious leaders and members of Non-Government Organisations and Civil Society Organisations (CSO), such as those involved in advocating for women's rights<sup>10</sup>.

33. The UNHCR also includes as a risk group family members of individuals associated with or perceived as supporting foreign troops or the central government<sup>11</sup>. However, as set out above, I do not accept that the applicant's family had any involvement with American forces in Afghanistan or any other international actor, or that they ever came to the attention of AGEs in Logar. I do not accept that the applicant's father and brother ever did work in connection with an American camp or base in Logar. The applicant himself has never claimed any direct involvement with foreign troops or international actors, nor does he belong to any of the other higher risks groups noted by the UNHCR. I note that the rest of the applicant's family all continue to reside in Logar and the applicant has not made any claim that they have suffered harm of any kind.
34. It is always possible that the applicant may become caught up in general violence. However, given the profile of those targeted, and given the relatively low number of casualties among the sizeable provincial population, I am satisfied that the chance of the applicant suffering harm, including serious harm, in Logar as a consequence of the security situation in Logar does not rise beyond remote.
35. I am not satisfied that the applicant faces a real chance of harm on account of the security situation in Logar.

*Returnee from a western country / Unauthorised disclosure of personal information*

36. The applicant claims to fear harm if returned to Afghanistan because he has spent time in a western country. The applicant claims that the time he has spent in Australia has changed him and that people would notice that he is different. I accept that the applicant may be regarded as a returnee from a western country.
37. The applicant still identifies as a practising Muslim. He remains in regular contact with his family in Afghanistan. I note the applicant's contention that he has become less religious and that his views on a number of subjects have changed, including the treatment of women. I accept that the applicant's views on women may have changed. However, the applicant himself noted at interview that his family are not very religious. The applicant's family appear to support the education of women, given that all his sisters have been supported in attending school and his sister completed her schooling before marrying. The applicant has not made any claim to have expressed his views on women publicly here in Australia or that he has any interest in doing so in Afghanistan. Given that the family has encouraged his sisters in their schooling and the family are not particularly religious in general, and given that the applicant has shown no particular propensity to espouse his views on women publicly, I do not accept that holding those views will give rise to a real chance of serious harm. The applicant also confirmed at interview that he still identifies as a Muslim and attends mosque. Although he noted that he attends mosque irregularly here, mostly due to a clash with study commitments, he stated at interview that his mosque attendance was similarly infrequent in Afghanistan. He has never indicated that he attracted any sort of adverse attention as a result.

---

<sup>10</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

<sup>11</sup> Ibid



38. In his written claims, the applicant stated that he no longer speaks perfect Dari and often has to use English because he has forgotten the applicable word in Dari. I do not accept that this is the case. The applicant completed an interview of over two hours with the delegate in which spoke about many aspects of his claims and his life in Afghanistan. He showed no noticeable hesitation in expressing himself in Dari, nor did the interpreter evince any difficulty in understanding him. I also note that he stays in contact with his family in Logar.
39. The applicant has said that he dresses differently now that he has spent so long in Australia. He states that he “likes to wear jeans, shorts, t-shirts, whatever I want. I am comfortable in these clothes”. I accept that while in Australia the applicant prefers to dress in western style attire. However, I consider that the applicant has done so as a matter of custom and practicality. I consider that the applicant would adopt the predominant mode of dress on return to Afghanistan for much the same reasons he adopted western dress in Australia, and not out of any fear of harm. I note that in a submission to the delegate and a further submission to the IAA, beyond stating that the applicant falls within the risk profile “Individuals perceived as ‘westernised’”, claims in regard to his clothing preference (and westernisation generally) are not expanded upon or developed further.
40. Furthermore, I do not accept that even if the applicant were to dress in western clothing that this would lead him to be targeted by the Taliban, as he claims, or give rise to a real chance of him suffering harm on return. Although now some years old, an article from December 2014 notes that many younger Afghans in the capital, Kabul, have adopted elements of western dress<sup>12</sup>, underscoring the fact that Afghanistan has not been isolated from western influences, and non-traditional clothing is not unknown. I note that in the first eight months of 2017, over 300,000 undocumented Afghans returned to Afghanistan<sup>13</sup>. The World Bank estimates that one in five people currently residing in Afghanistan is a returnee<sup>14</sup>. Despite those numbers, no specific, credible accounts of persons being targeted simply on the basis of their manner of dress could be located in the available country information. I note that the applicant’s agent has listed “individuals perceived as westernised” as a category from UNHCR Eligibility Guidelines, but has not cited anything from the report to support the assertion that clothing of the type above would lead to a perception that an individual was westernised. The report only specifically mentions appearance as a factor for “women in the public sphere”. The applicant is male, and does not have any sort of public profile nor has he given any indication that he intends to seek one on return to Afghanistan. The applicant has also claimed that dressing in western clothing would be worse for him because his family members worked with westerners. However, as set out above, I do not accept that this is true or that his family ever came to the attention of any AGE on account of working with any international actors.
41. DFAT has noted some occasional reports of people who were reported to have been targeted based on their having spent time in a western country<sup>15</sup>. It goes on to note that those having international associations (or identified as such) face a high risk of being targeted by AGEs, which may include returnees from western countries<sup>16</sup>. DFAT notes that most returnees conceal their association with the country from which they have returned, and keep a low profile on return, and that they do not face a significantly higher risk of discrimination or violence. In this context the report does not suggest that western dress of itself imputes such an association or that persons have been targeted on this basis. The applicant has not

---

<sup>12</sup> "West's cultural influence explodes on streets of Afghanistan", Stars and Stripes, 20 December 2014, CX1B9ECAB9054

<sup>13</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

<sup>14</sup> Ibid

<sup>15</sup> DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

<sup>16</sup> Ibid

indicated he otherwise has any intention or interest in raising his associations with Australia. EASO notes many challenges for returnees but does not indicate that returnees are subject to targeted attacks by AGEs<sup>17</sup>. The UNHCR report has noted some sources who indicate that there are sometimes issues for younger returnee men, particularly if they have embraced secularism, changed religion or come out as homosexual<sup>18</sup>. The applicant still identifies as Muslim, and has not made any claim to be homosexual, or be outspoken on social issues. As set out above, the applicant will be returning to a large family, who are not especially religious and support the schooling of his female siblings. The applicant has shown the ability to adapt successfully to life in Australia, as evidenced by ability to become reasonably fluent in English and find employment here. There is no reason to suppose he would not show the same adaptability on return to Afghanistan. The available country information does not indicate that dressing in western clothes would lead to a real chance of the applicant being imputed with western values or otherwise targeted by AGEs in the absence of an established profile or other risk factors, and I do not consider that concealment or discretion in regard to this sort of clothing would be necessary.

42. Furthermore, even if it were the case that dressing in the style above would lead to a real chance of harm, I consider that the applicant could avoid such harm by adopting more traditional Afghani attire. By the applicant's own account, he has adopted western dress as a matter of comfort, and indicates that he has become accustomed to dressing in such a fashion. I am not satisfied it is fundamental to his identity. I consider that assuming local Afghani attire would be a readily available and reasonable step. I do not consider that dressing in a western manner represents an innate or immutable characteristic, something fundamental to the applicant's identity or conscience, or otherwise falls under any of the exceptions listed in s5J(3)(c).
43. I accept that the applicant was subject to unauthorised disclosure of his personal details (the "data breach") by the Department of Immigration. It is possible this information may have been accessed and viewed by the Afghani government, and also by anti-government elements. However, there is nothing to indicate that the applicant would be subject to undue attention from the Afghani Government on account of seeking protection in Australia. Article 39 of the Afghani constitution guarantees the right of Afghani citizens to travel outside the country and return<sup>19</sup>. Even if that data was somehow in the hands of AGEs, there is nothing to indicate that they would have any interest in targeting the applicant on that account, any way of relating that data back to a specific individual on their return or any way of knowing if and when the applicant had re-entered the country. The data breach occurred while the applicant was detained and some years before the applicant made a SHEV application in May 2017. I am not satisfied the information released about the applicant would have disclosed whether or not the applicant had sought protection in Australia, or the nature of his claims. The information before me does not suggest that any individuals returning to Afghanistan have been targeted for reasons relating to the data breach.
44. I am not satisfied that the applicant faces a real chance of any harm as a returnee from a western country whose personal details were disclosed.

---

<sup>17</sup> EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102

<sup>18</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

<sup>19</sup> DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680

### **Refugee: conclusion**

45. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

### **Complementary protection assessment**

---

46. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

### **Real risk of significant harm**

47. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

48. I have concluded that the applicant is not a person of interest to the Taliban, or any other AGE in Afghanistan, nor would he face a real chance of harm for any other reason including his ethnicity, the security situation in Logar province, the unauthorised disclosure of his personal information on the internet, or being a returning asylum seeker who has resided in a western country. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm in Logar province.

### **Complementary protection: conclusion**

49. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

### **Decision**

---

The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

---

### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.